IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11443 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DECEASSED HIMMATSINGH CHAGANSINGH THROUGH & 1 - Petitioner(s)
Versus
MAKWANA BHIKUSINGH MANGAJI & 3 - Respondent(s)

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Appearance :
MR SHITAL R PATEL for Petitioner(s) : 1 - 2.
MR JV JAPEE for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 19/10/2007

ORAL JUDGMENT

1. The petitioners being the legal heirs of late Shri Himmatsingh Chagansingh – the original defendant in Regular Civil Suit No.252 of 1999 have filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the order dated 30.9.2000 passed by the learned 2nd Extra Assistant Judge, Himmatnagar in Misc. Civil Application No.52 of 2000 reversing the order passed by the learned Civil Judge (S.D.) Himmatnagar below

an application Ex.5 and 15 in Regular Civil Suit No.252 of 1999 on 25.8.2000.

2, Notice was issued by this Court on 25.11.2002 and status quo qua the land in question was ordered to be maintained. The petition was admitted on 6.9.2004 and status quo granted earlier was ordered to be continued. It is the case of the petitioners that land bearing Survey No.181 Village - Bhadresar, Taluka – Sabarkantha was purchased by the great grand father of the deceased Himantsingh Chagansingh in Sanvat year 2006 for an amount of Rs.351/- and necessary writing was executed by the erstwhile owner of the said land, namely, Jugarben Savaji. The said writing was attested by two witnesses. Since the predecessor in title of the petitioners and, thereafter, the petitioners were in lawful possession and occupation of the suit land they were cultivating the said land since 1956 and their names were also shown in the revenue record i.e. Village Form 7 x 12 and Village Form Nos.6 and 8A.

3. It is also the case of the petitioners that despite the fact that the land was purchased by the great grand father of the petitioners the name of erstwhile owner i.e. Jugarben Savaji was continued in the revenue record alongwith the predecessor in title of the petitioners and only on the basis of the said revenue record, on demise of said Jugarben on 24.9.1994, the present respondents

have tried to disturb the possession of the petitioners. The father of deceased Himmatsingh thereafter, some time in 1999 filed the complaint. As a counter blast and only with a view to pre-empt their rights in advance the respondents have filed Civil Suit being Regular Civil Suit No.252 of 1999 before the learned Civil Judge (S.D.) Himmatnagar for declaration and injunction against the father of the petitioners. The respondents have also filed an application Ex.5 for interim injunction. Since the respondents have filed Civil Suit the father of the petitioners has filed an application Ex.15 for counter injection pointing out that the petitioners were in possession of lawful cultivation of suit land for the last more than 15 years.

4. After considering the pros and cons, the learned Civil Judge (S.D.) Himmatnagar vide his order dated 25.8.2000 had rejected the application Ex.5 of the respondents and allowed an application Ex.15 moved by the father of the petitioners, whereby the present respondents were restrained from interfering with the lawful possession of the petitioners.

5. Being aggrieved by the said order of the learned Civil Judge (S.D.) Himmatnagar passed on 25.8.2000 the present respondents have filed Civil Misc. Appeal No.52 of 2000 before the learned District Judge, Himmatnagar, who vide his order dated 30.9.2000 allowed the said appeal and restrained the petitioners from

entering into the suit land till final disposal of the suit.

6. Being aggrieved by the said order of the learned Assistant Judge dated 30.9.2000 the petitioners filed Civil Revision Application No.1088 of 2000 before this Court under Section 115 of Code of Civil Procedure, 1908. However, on account of the amendment made in Section 115 of the Civil Procedure Code with effect from 1.7.2002, the Civil Revision Application was held to be not maintainable and hence the said Civil Revision Application was withdrawn on 21.12.2000 with a liberty to file petition under Article 227 of the Constitution of India. While allowing the petitioners to withdraw the said Civil Revision Application this Court has continued the interim relief till 25.11.2002. The petitioners have thereafter filed present petition and order of status quo is in operation till this date.

7. Heard Mr. Shital Patel, learned advocate appearing for petitioners and Mr. J.V. Japee, learned advocate appearing for respondents. The suit is of 1999, which is still pending. Ex.5 application was rejected by the learned Civil Judge, Himmatnagar, whereas Ex.15 application moved by the present petitioners was allowed. The said order of learned Civil Judge was challenged in appeal by the present respondents and appeal was allowed. The present petitioners were restrained from entering into the suit premises. This order is again challenged before this Court firstly in

the Civil Revision Application and thereafter in the present petition. The order of status quo qua the land, passed by this Court is still in operation. In these peculiar facts and circumstances of the case, without entering into the merits of the matter and without expressing any opinion on the controversy arose between the parties, the Court is of the view that interest of justice would better be served if the trial Court is directed to expedite the hearing of the suit and dispose it of as expeditiously as possible. The Court, therefore, directs the trial Court to expedite the hearing of the suit and decide the same as expeditiously as possible and preferably on or before 30.6.2008 and till the suit is decided the order of status quo qua the land passed by this Court will continue. It is made clear that the Court has not expressed any opinion on the controversy arose between the parties and the learned trial Judge would decide the suit on the basis of evidence produced and/or to be produced before him and without being influenced by the order passed by him below Ex.5 and 15 or the order of the learned District Judge, Himmatnagar.

8. Subject to the aforesaid directions and observations, this petition is accordingly disposed off. Rule is made absolute to the aforesaid extent without any order as to costs.

(K. A. PUJ, J.)

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